

**IOWA RACING & GAMING COMMISSION
MINUTES
NOVEMBER 19, 2015**

The Iowa Racing and Gaming Commission (IRGC) met on Thursday, November 19, 2015 at Prairie Meadows Racetrack & Casino, Altoona, Iowa. Commission members present were Jeff Lamberti, Chair; Carl Heinrich, Vice Chair; and Richard Arnold, Kris Kramer and Dolores Mertz.

Chair Lamberti called the meeting to order at 8:30 AM and requested a motion to approve the agenda as presented. Commissioner Heinrich moved to approve the agenda as presented. Commissioner Kramer seconded the motion, which carried unanimously.

Chair Lamberti moved to the approval of the minutes from the September 24, 2015 Commission meeting. Noting they had been distributed previously, he called for any changes or corrections. Hearing none, he requested a motion. Commissioner Mertz moved to approve the minutes from the September 24, 2015 Commission meeting as submitted. Commissioner Arnold seconded the motion, which carried unanimously.

Chair Lamberti moved to the announcements, and called on Brian Ohorilko, Administrator of the IRGC. Mr. Ohorilko provided the following information regarding future Commission meetings:

- December 2015 – No Meeting
- January 14, 2016 – Prairie Meadows Racetrack & Casino, Altoona, IA (Submissions due by December 30, 2015)
- February 2016 – No Meeting
- March 3, 2016 – Prairie Meadows Racetrack & Casino, Altoona, IA (Submissions due by February 18, 2016)
- April 14, 2016 – Ameristar, Council Bluffs, IA (Submissions due by March 31, 2016)

Mr. Ohorilko noted Commission staff has been working on the Exchange Wagering report, which is to be submitted to the Legislature by December 1st. He recognized the following staff who have worked on the report: Andrew Pulford, Dawn Rominger, Barb Blake and Lauren Welch from the Des Moines office; Stewart Hoover and Stan McClellan from Bettendorf; Dan Martens from Davenport; Jeff Rethmeier from Harrah's, and Cory Ostermeyer from Horseshoe.

Chair Lamberti moved to the Rules before the Commission under Notice of Intended Action and called on Mr. Ohorilko. Mr. Ohorilko provided the following explanation regarding the proposed rule changes: Item 1 clarifies which qualified agreements are required to be submitted to the Commission for approval; there were two material changes – on-going contracts will need to be resubmitted every 5 years, and contracts with licensed entities (slot manufacturers) would no longer be required to be submitted; and Item 2 extends the term of the occupational license to three years.

Mr. Ohorilko stated the remaining rules, with one exception, were the result of the racing industry task force, which included the Horsemen's Benevolent and Protective Association, Iowa Thoroughbred Breeders and Owners Association, and Prairie Meadows Racetrack and Casino. Material changes from the task force include Item 8, an industry rule, which clarifies when horses can be scratched; Item 20 limits the number of claims in a race to one, and Item 21 deals with when horses can be claimed and when the claims can be voided, which brings Iowa in line with other jurisdictions. The exception is Item 6 which clarifies instances when a stewards' decision can be appealed.

Hearing no comments or questions pertaining to the proposed rule changes, Chair Lamberti requested a motion. Commissioner Mertz moved to approve the rules as submitted under Notice of Intended Action. Commissioner Arnold seconded the motion, which carried unanimously.

Chair Lamberti moved to the contract approval portion of the agenda, and called on Ameristar Casino Council Bluffs, Inc. d/b/a Ameristar Casino Council Bluffs (Ameristar). Matthew Block, Vice President of Government Relations, presented the following contracts for Commission approval:

- AJR Equities, Inc. – Marketing Promotional Items
- Global Infrastructure – Vessel Hull Inspection; Dredging/Jetting Slip
- Wells Fargo Bank – Employee Credit Card Program (WFB-Pcard)
- Metropolitan Entertainment & Convention Authority – 5-Year Ameritrade Park Club Seat Suite Agreement

Hearing no comments or questions concerning the contracts, Chair Lamberti requested a motion. Commissioner Heinrich moved to approve the contracts as submitted by Ameristar. Commissioner Kramer seconded the motion, which carried unanimously.

Chair Lamberti called on Diamond Jo, LLC d/b/a Diamond Jo Casino (DJ). Wendy Runde, General Manager, presented the following contracts for Commission approval:

- NRT Technology – Cash Advance Services and TITO Kiosk Equipment Provider
- King Food Service, LLC – Seafood Purchases

Hearing no comments or questions concerning the contracts, Chair Lamberti requested a motion. Commissioner Mertz moved to approve the contracts as submitted by DJ. Commissioner Kramer seconded the motion, which carried unanimously.

Chair Lamberti called on Diamond Jo Worth, LLC d/b/a Diamond Jo Worth (DJW). Kim Pang, General Manager, presented the following contracts for Commission approval:

- NRT Technology – Cash Advance Services and TITO Kiosk Equipment Provider
- KTTTC Television – Advertising on NBC Affiliate Television Station for Casino Promotions
- Wine Down, Inc. – Liquor and Wine Purchases for Casino Restaurant and Bars

- Young Plumbing & Heating – Renewal of Maintenance Agreement for Building Environmental Systems

Hearing no comments or questions concerning the contracts, Chair Lamberti requested a motion. Commissioner Kramer moved to approve the contracts as submitted by DJW. Commissioner Heinrich seconded the motion, which carried unanimously.

Chair Lamberti called on Isle of Capri, Marquette, Inc. d/b/a Lady Luck Casino (LLC). Don Ostert, General Manager, presented the following contracts for Commission approval:

- Isle of Capri Marquette, Inc. d/b/a Lady Luck Casino/Upper Mississippi Gaming Corporation – Operating Agreement
- Wunderman Worldwide, LLC – Advertising Agency

Chair Lamberti noted the first item was an amendment to the Management Agreement, which the Commission was happy to see. He stated any motion could address both items, and requested a motion. Commissioner Mertz moved to approve the contracts as submitted by LLC. Commissioner Kramer seconded the motion.

Chair Lamberti asked if the advertising contract was put out for bid, or with any Iowa companies. Mr. Ostert stated he did not know the steps taken by corporate, but would take the Commission's concerns back to corporate for an answer. Hearing no further discussion, Chair Lamberti called for the vote. The motion carried unanimously.

Chair Lamberti called on IOC Black Hawk County, Inc. d/b/a Isle Casino Hotel Waterloo (IOC Waterloo). Bari Richter, General Manager, presented the following contracts for Commission approval:

- North American Video – New Surveillance System and Installation
- Wunderman Worldwide, LLC – Advertising Agency
- Everi Games, Inc. – Slot Machine Purchases

Commissioner Mertz noted IOC Waterloo was submitting the same advertising agency, and asked Ms. Richter if she was able to answer the question. Ms. Richter answered in the negative, but noted the process was handled by the corporate office.

Hearing no further comments or questions concerning the contracts, Chair Lamberti requested a motion. Commissioner Kramer moved to approve the contracts as submitted by IOC Waterloo. Commissioner Arnold seconded the motion, which carried unanimously.

Chair Lamberti called on Isle of Capri Bettendorf, L.C. d/b/a Isle Casino Hotel Bettendorf (IOCB). Nancy Ballenger, General Manager, presented the following contracts for Commission approval:

- Wunderman Worldwide, LLC – Advertising Agency

- Architectural Engineering Associates, Inc. – Commissioning Agent for Land-Based Casino Project

Hearing no comments or questions concerning the contracts, Chair Lamberti requested a motion. Commissioner Arnold moved to approve the contracts as submitted by IOCB. Commissioner Kramer seconded the motion, which carried unanimously.

Chair Lamberti called on SCE Partners, LLC d/b/a Hard Rock Hotel & Casino Sioux City (HRHCSC). Todd Moyer, General Manager, presented the following contracts for Commission approval:

- The Rosebud Touring Group Company – Entertainment Act
- Kone, Inc. – Elevator Maintenance
- Mark-It Smart, Inc. – Promotional Items
- Buzz Analytics Group, LLC – Marketing Consultation (RP)
- Reinhart Foodservice, LLC – Food Supplier
- The Printer, Inc. – Printing Services
- Sioux Laundry – Laundry Services
- Bally Gaming, Inc. d/b/a Bally Technologies – Gaming Equipment

Hearing no comments or questions concerning the contracts, Chair Lamberti requested a motion. Commissioner Heinrich moved to approve the contracts as submitted by HRHCSC. Commissioner Mertz seconded the motion, which carried unanimously.

Chair Lamberti called on Rhythm City Casino, LLC d/b/a Rhythm City Casino (RCC). Mo Hyder, General Manager, presented the following contracts for Commission approval:

- Allied Construction Services, Inc. – Construction – Labor, Material, Equipment and Service for Access Flooring
- Bally Gaming, Inc. – Purchase of Gaming Equipment
- Elite Casino Resorts, LLC – Goods and Services Cost Allocations from Elite (RP)
- Rapids Foodservice Contract and Design – Construction – Labor, Material, Equipment and Service for Food Service/Buffer
- Ulster Carpet Mill – Purchase of Carpets

Hearing no comments or questions concerning the contracts, Chair Lamberti requested a motion. Commissioner Mertz moved to approve the contracts as submitted by RCC. Commissioner Kramer seconded the motion, which carried unanimously.

Chair Lamberti called on Riverside Casino and Golf Resort, LLC d/b/a Riverside Casino and Golf Resort (RCGR). Dan Franz, General Manager, presented the following contracts for Commission approval:

- Ainsworth Game Technology, LTD – Purchase of Slot Machines

- Aristocrat Technologies, Inc. – Purchase of Slot Machines
- Bally Gaming, Inc. – Purchase of Slot Machines
- Bally Gaming, Inc. – Purchase of Table Games
- Biometrica Systems, Inc. – Surveillance Information Network Software License
- Cummins-Allison Corp. – Count Machine Replacement
- Elite Casino Resorts, LLC – Goods and Services Cost Allocations from Elite (RP)
- IGT – Purchase of Slot Machines
- Konami Gaming, Inc. – Purchase of Slot Machines
- Konami Gaming, Inc. – Maintenance and Support Agreement
- Mercy Iowa City – Medical Health Plan Costs
- North Country Business Products – Micros POS Terminals Purchase
- Rhythm City Casino, LLC – Support Services (RP)
- University of Iowa Hospitals and Clinics – Medical Health Plan Costs

Hearing no comments or questions concerning the contracts, Chair Lamberti requested a motion. Commissioner Kramer moved to approve the contracts as submitted by RCGR. Commissioner Arnold seconded the motion, which carried unanimously.

Chair Lamberti called on Grand Falls Casino Resort, LLC d/b/a Grand Falls Casino and Golf Resort (GFCGR). Sharon Hasselhoff, General Manager, presented the following contracts for Commission approval:

- Elite Casino Resorts, LLC – Goods and Services Cost Allocation from Elite (RP)
- Zimco Supply Company – Golf Course Products and Supplies

Hearing no comments or questions concerning the contracts, Chair Lamberti requested a motion. Commissioner Mertz moved to approve the contracts as submitted by GFCGR. Commissioner Heinrich seconded the motion, which carried unanimously.

Commissioner Lamberti called on Dubuque Racing Association, Ltd. d/b/a Mystique Casino (Mystique). Dustin Manternach, Chief Financial Officer, presented a contract with Guest Supply for Hilton In-Room Guest Supplies.

Hearing no comments or questions concerning the contract, Chair Lamberti requested a motion. Commissioner Mertz moved to approve the contract as submitted by Mystique. Commissioner Kramer seconded the motion, which carried unanimously.

Chair Lamberti called on Harveys Iowa Management Co., Inc. d/b/a Harrah's Council Bluffs Casino and Hotel (Harrah's). Janae Sternberg, Director of Finance, presented the following contracts for Commission approval:

- Engineered Controls – HVAC Vendor
- Lawn Wizards – Lawn & Snow Vendor

Hearing no comments or questions concerning the contracts, Chair Lamberti requested a motion. Commissioner Heinrich moved to approve the contracts as submitted by Harrah's. Commissioner Arnold seconded the motion, which carried unanimously.

Chair Lamberti moved to the license renewal for Iowa West Racing Association/Horseshoe Casino-Bluffs Run Greyhound Park (IWRA/HC-BRGP). Bo Guidry, General Manager, stated Pete Tulipana, President of IWRA, was unable to attend, but felt he would agree the parties have a great relationship and look forward to continuing it for many years to come. He advised the casino would operate 24 hours a day, seven days per week, for 365 days per year. The facility did not request any live racing or simulcast dates for calendar year 2016. He stated the facility spent \$1.9 million on capital projects in 2015, with additional projects to occur yet this year or early 2016. Mr. Guidry stated long-term capital plans include re-purposing the area vacated by current racing operations. The kennel compound area is in the early stages of a potential hotel development. He requested approval of the license renewal.

Hearing no comments or questions concerning the license renewal application, Chair Lamberti requested a motion. Commissioner Arnold moved to approve the renewal of the pari-mutuel racing license with no live dates or simulcasting requested; the racetrack enclosure license to conduct gambling games; and the security plan contained in the application. Commissioner Mertz seconded the motion, which carried unanimously.

Mr. Guidry presented the following contracts for Commission approval:

- American Lift – Electronic Sign Vendor
- Lawn Wizards – Lawn & Snow Vendor

Hearing no comments or questions concerning the contracts, Chair Lamberti requested a motion. Commissioner Kramer moved to approve the contracts as submitted by HC-BRGP. Commissioner Mertz seconded the motion, which carried unanimously.

Chair Lamberti called on Prairie Meadows Racetrack & Casino, Inc. d/b/a Prairie Meadows Racetrack & Casino (PMR&C). Gary Palmer and Derron Heldt, General Manager and Director of Racing respectively, were present to address agenda items.

Mr. Heldt advised the quarter horse meet ended on October 10th. He indicated the meet was very positive: field size was 7.9 entries per race compared to 7.6 in 2014; on track handle increased 5%, or approximately \$35,000; and off-track handle increased about 25% or \$725,000. Mr. Heldt attributed the increase to Los Alamitos, one of the largest quarter horse racetracks in the country simulcasting more races from the very start of PMR&C's live race meet. He stated another highlight of the meet was the number of catastrophic injuries – one on the quarter horse side. There were 1,700 unique starters. The industry standard is 1.2 horses per 1,000 starters. There were two catastrophic injuries during the thoroughbred meet. There were 4,300 starters. With over 6,000 horses competing, there were only three catastrophic injuries. Mr. Heldt credited the track superintendent and his staff. He stated the facility has put an emphasis on training, education, and brought in new technology and equipment which allows the track

superintendent and staff to react to any circumstances that may occur over the race season. He noted the importance of the track surface for the quarter horse races. Mr. Heldt stated the trainers were very happy with the track surface. He noted PMR&C hosted the Regional Challenge Championships in September in advance of the finals held at Lone Stone Park. One of the qualifiers from these races won a Grade 1 race at the finals.

Tom Lepic, President of the Iowa Quarter Horse Racing Association (IQHRA), stated Iowa quarter horse racing has made a name for itself around the country because of what PMR&C does for quarter horse racing in Iowa. He noted a few years back he addressed the Commission about the importance of the IQHRA and PMR&C working together to find additional owners and breeders and bringing them to Iowa in order to race at PMR&C. Mr. Lepic stated several records had been set over the past year. This year's meet started with two races called the Double Gold Futurity and Double Gold Derby. For these races, the IQHRA goes to breeding farms across the country and asks them to donate a stallion breeding to the IQHRA, which are then sold at auction. Those offspring are eligible to run in these races. By putting the auction online this year, the IQHRA raised \$123,000, with net proceeds of \$70,000. This money is put back into horse racing in Iowa to offset purse money being used by PMR&C for horse racing outside of the country. This year and next, IQHRA will pay for about 80% of the purse, which is \$110,000 between the two races. There were 46 starters in those two races this year; the horses come from all over the country. Mr. Lepic stated an Iowa bred won one of the races. The quarter horse meet had the highest number of Iowa bred 2-year old starters ever in the State of Iowa; there were 135 foals in 2013 and 63%, or 80, of them started this year at PMR&C. Mr. Lepic advised the national average for 2-year olds is 40% - 50%.

Mr. Lepic advised the largest number of 2-year olds participated in the state-bred race called the Germinator Futurity, which had a record purse in excess of \$200,000. He indicated these are the kinds of things that draw more people to the industry. Additionally, there were 48 Iowa-bred races run this year, or approximately 18% of all races run at PMR&C this year. They held a Championship Night for the first time this year that included Iowa-breds and the big races that were open to other horses from around the country. The purse exceeded \$850,000. Some other highlights from the season: an Iowa-bred led the nation with three Stakes wins, two of which were against open company and horses from around the country. The same horse currently leads the country with the most wins in one season with six wins. Mr. Lepic advised the horse would be racing at a Florida racetrack on December 27th in a \$500,000 Derby.

Mr. Lepic noted the IQHRA has been recruiting new owners and trainers. He stated the IQHRA submitted an application for the 2017 Bank of America Challenge Championships. When the races were held at PMR&C three years ago, the IQHRA invited some show horse people to see the races. One of the larger owners and breeders had so much fun, he decided to buy and breed racehorses. That individual set a new record for the most wins in one season at PMR&C – thirteen. He has been named the champion owner for all horses.

Mr. Lepic stated the quarter horse industry is excited. Kentucky announced they will be building a quarter horse-only track south of Lexington which will open for racing in 2017. He noted the Kansas Legislature is working hard to bring quarter horse racing back to The Woodlands,

hopefully in 2017. He stated the IQHRA has been working with both states, and if that comes to pass, the seasons will line up perfectly for Iowa. Texas will run after Oklahoma ends the end of May until the start of the Iowa meet, and then Kansas will have their meet.

Commissioner Heinrich asked where the track was in Kansas. Mr. Lepic advised it is in the Kansas City area. Commissioner Mertz thanked Mr. Lepic for his report.

Chair Lamberti moved to the approval of the 45-day plan for the 2016 meet. Hearing no comments or questions concerning the 45-day plan, Chair Lamberti requested a motion.

Commissioner Mertz moved to approve the application for the Season Approvals contingent upon the immediate written notification of any change in racing official positions; and the completion of necessary IRGC licensing and DCI background checks of officials. Commissioner Kramer seconded the motion, which carried unanimously.

Mr. Palmer presented the following contracts for Commission approval:

- American Gaming Systems – Gaming Equipment and Supplies
- Atlantic Bottling – Soft Drink Supply Agreement
- EMC Risk Services, LLC – Worker's Compensation Insurance

Hearing no comments or questions concerning the contracts, Chair Lamberti requested a motion. Commissioner Mertz moved to approve the contracts as submitted by PMR&C. Commissioner Arnold seconded the motion, which carried unanimously.

Chair Lamberti moved to the hearings before the Commission, and called on RCGR. He called on Mr. Ohorilko for a summary. Mr. Ohorilko advised staff had entered into a proposed Stipulated Agreement with RCGR for a violation of Iowa Code § 99F.4(22) (Self-Exclusion). Mr. Ohorilko stated the individual completed the Iowa Statewide and Lifetime Self-Exclusion Form at Isle Casino Hotel Waterloo on March 16th; and the self-exclusion status was added to the player database at RCGR by flagging her retired player's club account. On or about August 18th, the individual went to the cage area at RCGR and requested a player's club card, providing the cashier with the same name, social security number and birth date as on the self-exclusion form. The individual was issued a new player's club account and proceeded to gamble at several machines. The individual returned to RCGR on August 31st and requested a duplicate card. She again gambled at several slot machines, which qualifies for Commission referral. Later that morning, the cage department gave the player's services department a list of the player's cards issued. While reviewing the list, staff discovered the issuance of a card to an individual on the statewide self-exclusion list. Mr. Ohorilko advised RCGR acknowledges the violation, and has agreed to an administrative penalty of \$3,000. He indicated this is the first violation of this nature in the past 365 days.

Mr. Franz expressed regret that the incident had occurred; that RCGR takes these kinds of issues very seriously. He stated the employee simply did not follow policy, and ignored the warning on the computer screen that the individual was banned. Mr. Franz indicated he feels RCGR has an

adequate process in place. He stated the situation has been discussed with the employee, who has been issued a performance development plan and issued a two-day suspension.

Hearing no comments or questions concerning the Stipulated Agreement with RCGR, Chair Lamberti requested a motion. Commissioner Mertz moved to approve the Stipulated Agreement and administrative penalty as presented. Commissioner Heinrich seconded the motion, which carried unanimously.

Chair Lamberti called on RCC. He asked Mr. Ohorilko for a summary. Mr. Ohorilko advised staff had entered into a proposed Stipulated Agreement with RCC for a violation of Iowa Code § 99F.4(22) (Self-Exclusion). He stated the individual completed the Iowa Statewide and Lifetime Self-Exclusion Form at RCC on April 12, 2010. The individual was added to Riverside's player tracking system on or about April 16, 2010; and was added to RCC's player tracking system when the facility opened under new management in February 2014. In January 2015, the individual went to RCC and was issued a player's club with her new last name by facility staff. The new card was obtained using the same information as her previous account. The individual used her account to gamble at RCC at least four times during the month of January 2015. On June 23rd, the individual won a taxable jackpot in the amount of \$1,200, and was paid the jackpot by a cage supervisor. RCC conducted an audit on or about August 21, 2015, and discovered the payment, which was reported to Commission staff. Due to the circumstances, the facility has agreed to an administrative penalty of \$3,000. Mr. Ohorilko noted this is the first offence of this nature in the past 365 days for RCC.

Mr. Hyder advised the facility takes compliance issues very seriously, and is disappointed by the sequence of events that occurred. He stated the facility has taken appropriate measures and added procedures to insure the situation does not occur again.

Hearing no comments or questions concerning the Stipulated Agreement with RCC, Chair Lamberti requested a motion. Commissioner Heinrich moved to approve the Stipulated Agreement and administrative penalty as submitted. Commissioner Mertz seconded the motion, which carried unanimously.

Chair Lamberti called on HGI-Lakeside, LLC d/b/a Lakeside Casino (Lakeside). Mr. Ohorilko noted staff had entered into a proposed Stipulated Agreement with Lakeside for a violation of Iowa Code § 99F.9(5) (Minor). He stated between the dates of August 19 and 25, 2015, a minor entered the gaming floor on six different occasions. On each occasion, the minor was able to enter the floor unchallenged, was on the floor for over 30 minutes and gambled each time, which triggered the Commission referral. The matter was further aggravated by the fact that six different security officers were involved. On August 25th, local surveillance notified the Division of Criminal Investigation (DCI) that a female had been denied entry three separate times. After a thorough review, it was discovered that the individual had gained entrance to the gaming floor on six prior occasions. As a result of the violations, the facility has agreed to pay an administrative penalty of \$60,000. In addition, Lakeside has agreed to provide additional training to the security staff on the issue of estimation of age based on appearance and complete a test, documenting each employee's comprehension of the training.

Bob Thursby, General Manager, stated he was mortified by this transgression, and the fact that it was not the result of the failure of one individual employee to be properly trained or motivated, and to have it occur multiple times within a week. He advised the facility has completed the required training; they brought in Donald Sharr from the Bureau of Investigations. Each of the individuals involved in not checking IDs has served a three-day suspension. The manager of the security department has been retrained. The facility is increasing the frequency of ID training from bi-annually to quarterly; and has also added it into the pre-shift meeting notes on a daily basis. Due to the fact the situation involved so many employees and occurred over a significant period of time, the facility has also looked for ways to better motivate the employees. Mr. Thursby stated he has added a couple of game-type scenarios where security personnel are asked questions and will receive a small reward if they get the answer right. They will be subject to additional training if they are not proficient in the subject matter. Mr. Thursby stated the facility has taken some extraordinary steps to correct the situation to insure it won't happen going forward.

Commissioner Heinrich stated he knows none of the facilities want these types of situations to occur. He noted Mr. Thursby had answered one of his questions with regard to the frequency of training. Commissioner Heinrich asked Mr. Thursby if he felt quarterly training was sufficient. Mr. Thursby answered in the affirmative, in combination with the motivational efforts and the pre-shift notes.

Commissioner Arnold stated that Mr. Thursby should have been mortified that the situation occurred. He indicated he found it difficult to believe six different people let the individual onto the gaming floor; he could understand one. With six, he believes something is lacking and is glad to see the facility provided educational training to the security staff. Commissioner Arnold stated he felt the \$60,000 penalty was fair, but if it happens again, he would go for the full amount of \$120,000 as the Commission could have assessed \$20,000 for each violation.

Commissioner Mertz stated she concurred with Commissioner Arnold's comments. She stated she could have excused one or two different individuals, but not six. While she is happy to see they have provided additional training, she suggested perhaps the facility needed better oversight. Commissioner Mertz stated she felt the facility should have been assessed \$20,000 per violation. She noted Lakeside has been before the Commission for these types of situations before and believes something is not going well. She requested better oversight going forward.

Chair Lamberti stated the Commission was pleased the facility brought in outside expertise to conduct additional training as requested as it appears there was a systematic failure in the training to have six different individuals who did not handle the situation properly. Chair Lamberti moved to approve the proposed Stipulated Agreement with an administrative penalty of \$60,000. Commissioner Mertz seconded the motion, which carried unanimously.

Chair Lamberti called on Harrah's. Mr. Ohorilko advised staff had entered into a proposed Stipulated Agreement with Harrah's for a violation of Iowa Code § 99F.9(5) (Minor). Mr. Ohorilko advised on September 24th an underage male entered the gaming floor unchallenged, gambled and was on the floor for over 30 minutes, which triggered the Commission referral.

The individual left the gaming floor and was caught trying to re-enter the floor. At that time, Harrah's reported the incident to Commission staff. Harrah's has agreed to an administrative penalty of \$20,000 due to the circumstances of this incident.

Bo Guidry, General Manager, assured the Commission Harrah's takes underage gambling very seriously, and this is an isolated incident. He stated the team at Harrah's does a phenomenal job; noting the facility has approximately one million visitors per year. There was one individual that did not do his job and he has been disciplined. The facility goes straight to suspension and a final written warning for this type of issue.

Chair Lamberti called for any questions. Commissioner Heinrich asked if Harrah's has periodic training for the security staff. Mr. Guidry answered in the affirmative, noting checking IDs is one of the topics every day. He noted other departments are also trained to identify underage individuals.

Hearing no further comments or questions, Chair Lamberti moved to approve the proposed Stipulated Agreement with an administrative penalty of \$20,000. Commissioner Mertz seconded the motion, which carried unanimously.

Chair Lamberti called on Horseshoe. Mr. Ohorilko advised Commission staff had entered into a proposed Stipulated Agreement with Horseshoe for a violation of Iowa Code § 99F.9(5) (Minor). He stated on June 28th an underage male entered the non-gaming portion of the facility, and received a wristband, which he later removed and placed in his pocket. The individual and his group approached the doors leading to the clubhouse elevator. The security guard posted at the location did not request identification from anyone in the group. The individual made his way on to the floor, gambled and consumed alcohol in excess of 30 minutes. The minor was later identified by a security officer who recognized the individual as underage and removed him from the floor. Mr. Ohorilko advised Horseshoe self-reported the incident. The facility has agreed to an administrative penalty in the amount of \$20,000.

Mr. Guidry advised the individual's father helped him get through, and the facility is pursuing charges against the father as well. He stated he is glad the racing side of the business is being closed down December 18th as there were some holes in that area. He indicated steps have been taken to insure the situation does not occur again.

Hearing no comments or questions concerning the proposed Stipulated Agreement, Chair Lamberti moved to approve the proposed Stipulated Agreement with an administrative penalty of \$20,000. Commissioner Kramer seconded the motion, which carried unanimously.

Following a short break, Chair Lamberti moved to the final hearing before the Commission, the Board of Stewards vs. William D. McCarty, which is an appeal of a Proposed Decision of an Administrative Law Judge (ALJ). He advised each side would be provided ten minutes to present their case, and an additional five minutes for rebuttal if needed. Assistant Attorney General Gretchen Kraemer served as Conflict Counsel for the Commission.

Jeff Peterzalek, Assistant Attorney General assigned to the Commission, stated the matter before the Commission is an appeal of a Board of Stewards' Decision which subsequently became a contested case proceeding before an ALJ. The issue is whether the ALJ was correct in determining that a unanimous Board of Stewards' Decision disqualifying a horse based on a collision between horses and that the collision interfered with the outcome of the race was an abuse of their discretion. Mr. Peterzalek advised the Board of Stewards is comprised of three individuals; two appointed by the Commission and one by the facility. In this instance, the Chief Steward, Ralph D'Amico, has decades of experience in the horse racing industry, not only as a steward but as a Hall of Fame jockey. Rick Evans, the other Commission steward, also has decades of experience as a steward. Dan Fick, the facility-appointed steward, is a Stewards' steward; and sits on an accreditation committee for stewards. Mr. Peterzalek stated the stewards were selected for their expertise in horse racing. He noted the stewards have to watch every race, and make it official prior to the commencement of the next race. There are two things that could slow down the process: if the Stewards notice something and "hang an inquiry", or if some of the participants of the race file an objection or protest. In this case, both happened. The Stewards, during the running of the race, noticed something amiss and started reviewing the video and some of the jockeys involved filed a protest based on the No. 7 horse coming in and colliding with the No. 4 horse, which then veered into the No. 3 horse. Mr. Peterzalek advised the Stewards went through the process and determined there was interference by the No. 7 horse, which affected the outcome of the race. He pointed out that the hearing transcript reflects a substantial amount of time was devoted to establishing the expertise of the Stewards. He noted the Commission is generally happy to have this particular ALJ, but during the introductory comments, she states: "As you'll find out, Ms. Moss, I am a novice; I've never stepped foot in a horse racing facility." He stated it puts the ALJ in an awkward position when there are people with decades of experience and are paid to judge the races to then judge what they have decided.

Mr. Peterzalek stated he has found it beneficial to have the Commission look at the race in question. He noted that during the hearing, the video was able to be shown in slow motion, but he does not have the ability to do so today. He advised the video is taken from three different angles; the first doesn't show the incident very well, but the second two views do. In watching the video, Mr. Peterzalek advised the No. 7 horse was orange, the No. 4 was yellow, and the No. 3 horse is blue. He noted the incident occurs about half way through the race. He indicated one of the reasons for showing the race at full speed is to show that the race goes quickly and there is a lot going on. One steward will be watching the race through binoculars, and another will be watching it on the monitors. He noted the No. 7 horse won the race, the No. 4 horse came in 5th and the No. 3 horse came in last. Mr. Peterzalek stated decisions have to be made quickly as there are only about 20 minutes between races. During that time, the stewards review the video and talk to jockeys. Should they determine there is interference sufficient to affect the outcome of the race, the stewards have the ability to put that horse in last place or behind the horse they believe was interfered with to the extent that it affected the outcome of the race.

The second view shows the No. 7 horse veering into and colliding with the No. 4 horse. The No. 4 horse pulls up, and then veers toward the No. 3 horse, which also has to pull up. Everyone acknowledged that based on the strength of the No. 7 horse, the other two did not have a chance of winning, but the jockeys of the No. 4 and No. 3 horses indicated they could have finished

better than they did had their horses not been interfered with. Mr. Peterzalek indicated this is what the stewards' saw in real time, in watching the video and then made the determination that not only was there interference, but interference sufficient to affect the outcome of the race.

Mr. Peterzalek said the issue is an "abuse of discretion" standard. He noted his brief set forth some abuse of discretion cases and the standards for those cases. He indicated that in order for a decision to be an abuse of discretion, it has to be clearly unreasonable, irrational, made against reasonable evidence, or not based on substantial evidence. Mr. Peterzalek stated the ALJ focused on the substantial evidence component. He indicated this matter got off track when the question was asked if there was evidence to support the decision not made instead of if there was evidence to support the decision rendered. Mr. Peterzalek stated the ALJ substituted her judgement based on her review of the material and video for that of the stewards. Under the substantial evidence standard, if the evidence can support more than one conclusion, as a matter of law, it cannot be abuse of discretion. Therefore, even if the Commission determined the evidence supports what the ALJ determined or it supports what the stewards decided, as a matter of law, it cannot be abuse of discretion.

Mr. Peterzalek moved to the evidence presented in the case. He stated the ALJ incorrectly noted the only evidence of interference in the outcome of the race was the severity of the contact. The record shows evidence was presented regarding the experience and expertise of the stewards, the video of the race, and more significantly, the participants in the race – the jockeys that were on the Nos. 7, 4 and 3 horses. The jockey on the No. 3 horse indicated he was intimidated as the No. 4 horse got hit so hard and checked his horse, which stopped his forward movement; and while he did not feel he could have won the race, he did feel he could have finished better than last place. The jockey on the No. 4 horse gave similar testimony. Mr. Peterzalek stated the day after the race, the stewards and jockeys have a "movie day" where they review the video from the races and discuss any issues. In this particular case, Chief Steward D'Amico noted that the jockey on the No. 7 horse stated to the stewards that "he had messed up and they made the right decision in disqualifying him". The ALJ discounted the comment, indicating he made the comment in order to get along with the stewards. Mr. Peterzalek stated those were the notes taken by the stewards; they were present when the comment was made and were in the best position to determine if what he was saying was accurate. He stated the comment was accurate as it was exactly what the other jockeys were saying about the race. Mr. Peterzalek stated there was more than substantial evidence presented to support the stewards' decision in this case. He indicated if the Commissioners' were to review the transcript and the exhibits at best there is a situation where the evidence could support one or two decisions – the one made by the ALJ and the one made by the stewards. As previously noted, as a matter of law, that scenario cannot be an abuse of discretion. Mr. Peterzalek requested that the Commission reverse the ALJ's decision and affirm the stewards' decision.

Allison Steuterman, from the Brick Gentry Law Firm, represented William D. McCarty, the owner of the No. 7 horse, which had been fouled and disqualified back to fifth place. She stated the issue in the appeal is Racing & Gaming Rule 491-10.4, which deals with fouls and disqualifications during a race. The rule requires interference, and that the interference affects the outcome of the race. Ms. Steuterman pointed out there is no question that interference

occurred; however, as the ALJ found, there is no substantial evidence that the interference affected the outcome of the race for the No. 4 horse. She stated that when the Commission assigns the appeals to an ALJ, they are giving them the authority and power to determine the facts and apply those facts to the law, which is what occurred in this case. There was a half-day hearing during which the video was played over and over; the ALJ had the benefit of having counsel as well as the testimony of witnesses explaining the video as it was played in slow motion, and having live testimony from the witnesses, including Chief Steward D'Amico, the jockey of the No. 7 horse, and the horse's trainer. Ms. Steuterman noted the ALJ also had the ability to consider all documentary evidence that was presented. After doing so, the ALJ then had the time to make a reasoned decision applying the law, and applying the abuse of discretion standard which the ALJ expressly sets forth in her opinion. Ms. Steuterman stated the ALJ was the best person to determine the credibility of the witnesses and weigh all of the evidence in the case and apply it to the law as she had the time and expertise to do so. Ms. Steuterman stated the stewards based their decision on the interference between the No. 7 horse and the No. 4 horse. She pointed out that a viewing of the video shows the No. 7 horse bore the brunt of the impact as the horse's legs almost go out from under her but goes on to win the race. The video provides no indication that the No. 4 horse lets up, slows down or in any way is affected or has the outcome of his race affected. Ms. Steuterman stated the parties agree on the law and what abuse of discretion is; even taking the higher standard into consideration, the ALJ found there was no substantial evidence to support that prong of the rule. After having the opportunity to review everything, Ms. Steuterman stated the ALJ did not insert her opinion in over the stewards, but stated there was no indication the contact between the horses affected the outcome of the race for the No. 4 horse.

Ms. Steuterman noted that Mr. Peterzalek talked about the testimony that was placed into evidence at the hearing. She stated the jockey for the No. 7 horse testified and denied making any comments at the movie viewing about admitting the disqualification was accurate. She pointed out the testimony of the other jockeys was not live testimony, but Chief Steward D'Amico telling the judge what the jockeys had previously told him. She called that a mischaracterization that testimony was presented from those jockeys. Ms. Steuterman also stated that Chief Steward D'Amico testified there was no way the No. 4 horse could have won even if it hadn't been hit by the No. 7 horse, nor could the No. 3 horse have won.

Ms. Steuterman stated they disagreed with Mr. Peterzalek about whether the ALJ asked if there was any substantial evidence to support the Stewards' decision, not if there was substantial evidence to support a different position. In doing so, the ALJ found there was not. Ms. Steuterman asserted the ALJ was in the best position to make this decision; is an excellent ALJ, knows the law very well and applied it accordingly in this case. She requested the Commission uphold the ALJ's decision and that the No. 7 horse be returned to first place and awarded the purse money associated with that position.

Mr. Peterzalek informed the Commission that while they do assign ALJs to hear these cases initially, the ALJ issues a Proposed Decision to the Commission, which has the ultimate authority to determine the issue. The decision is subject to the Commission's review. With respect to the outcome of the race, Mr. Peterzalek stated it is important to note, by rule, that

when the stewards make a decision and make the race final and do what they did here, that is final for purposes of the betting public. Bets are paid out in accordance with that decision; it is after the fact that the situation affects the purse as much as anything. Mr. Peterzalek stated it isn't whether the horse finished in the money or determining whether it interfered with the outcome of the race, it is how they finished. He noted there are all kinds of notations for the betting public to view in determining how to place their bets; the last place finish due to intimidation will be noted and affects the pari-mutuel betting pool and public and falls into the definition of interfering with the outcome of the race. He stated there was a misconception that interference with the outcome of the race only applied to situations where the horse would have finished in the money or clearly could have finished better than what they did and did not take into account all of the things that the people in the horse racing industry take into account when they are reporting on how horses participate and function in a race.

Ms. Kraemer asked if Mr. Peterzalek had requested some practical guidance. Mr. Peterzalek answered in the affirmative. He noted that the betting public has been paid based on the stewards' decision at the time of the race. He stated that if the ALJ's decision is affirmed, it changes the outcome of the race; the fourth place horse will now be fifth and finishing out of the money. By affirming the ALJ's decision, the Commission will have taken money from the betting public without providing them an opportunity to be heard. He said he is seeking advice on what actions should be taken in this situation and future situations – Should the Commission be sending out hearing notices to every participant in the race initially so that everyone can have their say. He noted it is the owner of the horse that filed the appeal, not the trainer or jockey; but the person who gets the largest share of the purse. Mr. Peterzalek stated the Commission should provide some guidance on the issue, particularly to Commission staff as they initiate the appeal hearings so they know who should be receiving notices and who should be participating in the hearings. He noted there was a possibility of twenty different hearings in this particular situation. Ms. Kreamer asked if the purse was still being held. Mr. Peterzalek answered in the affirmative.

Commissioner Heinrich asked if the horses were not to touch at all. Mr. Peterzalek stated that is not necessarily the case, noting there was some initial contact right out of the gate. He stated the rules state the horses are to stay in their lane, but there is usually a little bit of bumping at the start of the race. If it is incidental, it is not declared a foul; if it is significant, then it is a foul.

Commissioner Heinrich stated that if the one horse was affected and had to slow down, he was unable to see that, but noted he is not trained to see those types of things. Mr. Peterzalek indicated that was one problem with not being able to show the video in slow motion. He reiterated that the No. 7 horse veered in and collided with the No. 4 horse, which not only impeded its forward progress, but drove it into the No. 3 horse. Mr. Peterzalek stated that he would not be able to see the hesitation either when viewing the video at full speed. Commissioner Heinrich stated the stewards are trained to see and watch for these types of issues. Mr. Peterzalek concurred.

Ms. Steuterman stated it is important to note the stewards are trained to look for these types of situations during a race; however the ALJ is trained to weigh the evidence, weigh its credibility

and apply the law. Ms. Steuterman stated the ALJ is equally trained and experienced to answer the questions and make this determination, which is why the Commission sends these situations to the ALJs to be reviewed. She stated she did not want anyone to forget that is what has occurred in this situation. Ms. Steuterman stated she wanted everyone to remember the ALJ's expertise. She stated she concurred with Mr. Peterzalek that the issue is not just the purse money, but that it is important where the horses finished; which is another reason for Mr. McCarty to be challenging the decision that the collision did not impact or alter the outcome of the race for the No. 4 horse but is altering the outcome for the No. 7 horse. Ms. Steuterman noted the No. 7 horse beat the No. 4 horse by 4 lengths and a neck. Ms. Steuterman requested that the Commission uphold the Proposed Decision issued by the ALJ.

Commissioner Heinrich stated he understood what Ms. Steuterman was saying; however, the key factor for him is whether the horses coming together affected the outcome of the race. Ms. Steuterman concurred, and noted the ALJ had indicated that was the key factor in the appeal and that there was not substantial evidence to show that the contact affected the outcome of the race.

Hearing no further comments or questions for the attorneys, Chair Lamberti stated the matter was considered submitted to the Commission. He requested a motion to go into Executive Session to consider their decision. Commissioner Heinrich moved to go into Executive Session pursuant to Iowa Code Section 21.5(1)f for the purpose of discussing the decision to be rendered in a contested case conducted according to the provisions of chapter 17A. Commissioner Mertz seconded the motion, which carried unanimously on a roll call vote.

Upon returning to open session, Chair Lamberti noted the Commission had discussed the matter and indicated his belief that there was sufficient evidence to support the decision of the Stewards' under the abuse of discretion standard. He moved to reverse the decision of the ALJ and reinstate the decision of the stewards. He directed the Commission's conflict counsel, Ms. Kraemer, to prepare a draft opinion consistent with the Commission's deliberations. Commissioner Mertz seconded the motion, which carried unanimously.

As there was no Public Comment or Administrative Business to come before the Commission, Chair Lamberti requested a motion to adjourn. Commissioner Mertz so moved. Commissioner Kramer seconded the motion, which carried unanimously.

MINUTES TAKEN BY:

JULIE D. HERRICK